

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

American Medical Systems, Inc.,
and Laserscope,

Plaintiffs,

v.

Civil No. 08-4798 (JNE/FLN)
ORDER

Laser Peripherals, LLC,

Defendant.

On April 15, 2010, the Court will hear cross-motions for summary judgment and motions to exclude expert witnesses in this matter. Under the local rules, opening memoranda were due on March 4, response memoranda on March 25, and reply memoranda on April 1. *See* D. Minn. LR 7.1(b). By agreement of the parties, and with the Court's understanding that the deadlines for filing response and reply memoranda would not be extended, the deadline for filing opening memoranda was extended to March 12. The record reflects that LP filed its opening memoranda (four in number) on March 12 and AMS filed its opening memoranda (four in number) on March 14. The parties apparently agreed that LP could file its responses to AMS's motions on March 27 due to AMS's late filing. They did not notify the Court of this agreement.

On March 23, LP filed a letter with the Court seeking an extension of time to respond to AMS's summary judgment motion from March 27 to March 29 to permit it to review certain materials filed during an ongoing reexamination of the patent at issue. LP mentioned the parties' agreement as to the deadline for its response memoranda in that letter. In response, AMS argued that no extension was necessary, that granting the extension would give AMS only three days to file its reply, and that any extension "should be mutual and should apply to both parties." On March 24, the Court granted LP an extension until March 29 to file "responsive memoranda on

the issues of infringement, validity, and inequitable conduct.” The Court also granted AMS an extension until Saturday, April 3, to file its reply on those issues.

Now before the Court are two letters from AMS seeking an extension of time from March 25 to March 27 to file its memoranda in response to LP’s motions. AMS argues that it spent as much time as LP dealing with LP’s earlier letter request and that it spent “substantial amounts of time” collecting and reviewing documents to be submitted in the reexamination. AMS further states that two of its attorneys have been dealing with family medical issues. Finally, AMS states that it sought the consent of LP, via e-mail and telephone, to file opening memoranda on March 14 and for an extension to March 27 for the responses, but LP did not respond. LP argues that AMS extended its time until March 14 without the consent of the parties and that it could not have been very difficult for AMS to produce to LP the reexamination documents because they were previously filed in the reexamination. LP also contends that AMS had no need to review those documents for confidentiality reasons because LP only sought documents that were publicly available.

The Court is moved to remind the parties that the abbreviated timing for filing response memoranda is the consequence of the parties’ agreement to file opening memoranda on March 12 rather than March 4. Nevertheless, the Court grants AMS’s request for an extension until Saturday, March 27 to file its memoranda in response to LP’s summary judgment motions and motions to exclude expert witnesses. The Court also grants LP an extension until Saturday, April 3, to file its reply memoranda in support of its summary judgment motions and motions to exclude expert witnesses. As stated in the Order dated March 24, 2010, the deadline for LP to file its response to AMS’s motion on the issues of infringement, validity, and inequitable conduct is Monday, March 29, and AMS’s deadline to file its reply memorandum on those issues is

Saturday, April 3. LP's memoranda in response to AMS's motions to exclude expert witnesses remain due on Saturday, March 27. Further requests for extensions will not be viewed favorably.

IT IS SO ORDERED.

Dated: March 25, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge